Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 73-1446

JOAN ROE, PETER POE, and COE PRESS, INC.,

Petitioners,

—v.—

JANE DOE,

Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS
OF THE STATE OF NEW YORK

REPLY TO AFFIRMATION IN OPPOSITION

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Petitioners' counsel respectfully submits this reply to the "Affirmation in Opposition" filed by the counsel for the respondent, which was submitted in opposition to the motion of the American Civil Liberties Union (hereinafter "ACLU") and the Civil Liberties Union of Massachusetts (hereinafter "CLUM"), for leave to file a brief amici curiae.

1. Respondent's counsel opposes the receipt of such amici's brief because he disagrees with the position taken therein on the merits. This is no more a justification for objecting than would be the case of petitioners' counsel objecting to the proposed brief amici curiae lodged by the American Psychiatric Association (hereinafter "APA") and others, which generally supports respondent's position. Respondent's counsel argues (page 5) that the ACLU-CLUM brief should not be received because it is "concerned primarily with a stated conflict between the right of privacy and freedom of speech and press", which in his view is not before the Court. It is interesting that the proposed APA amicus brief, which supports respondent's position, clearly acknowledges that that is the very issue which is before the Court (see p. 4, proposed Amicus Curiae Brief of APA, et al.).

2. On page 4 of his "Affirmation", respondent's counsel asserts that petitioners' counsel is "one of the counsel for the amicus, American Civil Liberties Union". This is indeed true. Petitioners' counsel, Marvin M. Karpatkin, is one of four unpaid volunteer general counsel of the ACLU, and is an ACLU cooperating attorney. Respondent's counsel has also been an ACLU cooperating attorney. Petitioners' counsel advises the Court, however, that Mr. Karpatkin did not participate in any way in the deliberation and determination of the ACLU and the CLUM with respect to their participation in this case amicus curiae. Indeed, Mr. Karpatkin was absent from the meeting of ACLU general counsel and legal staff where the case was discussed, and the decision to intervene made, and the minutes of the meeting records both his absence and non-participation. Petitioners' counsel had no

knowledge of CLUM's interest until CLUM's counsel requested petitioners' consent.

3. As soon as it was learned that amicus briefs were in preparation by APA, et al., in support of respondent, and by ACLU-CLUM in support of petitioners, petitioners' counsel, in response to a request for consent by counsel for amici APA, et al., advised counsel, that petitioners would consent to the APA et. al. amicus brief if respondent would consent to the ACLU-CLUM brief. The response of respondent's counsel was negative, and consequently, both groups of amici and the Court had to be burdened with these unnecessary motions.

October 2, 1974

Respectfully submitted,

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